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In re Application of :
FRITZ et al. :
Application No.: 10/018,619 : DECISION
PCT No.: PCT/EP00/05631 :
Int. Filing Date: 19 June 2000 :
Priority Date: 18 June 1999 :
Attorney's Docket No.: 3993.003 :
For: RADIATION SOURCE FOR ENDOVASCULAR :
RADIATION TREATMENT :

This decision is in response to applicant's "REQUEST FOR RECONSIDERATION, RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS, AND AMENDED PETITION UNDER 37 CFR 1.137(b) TO REVIVE ABANDONED APPLICATION" filed in the United States Patent and Trademark Office (USPTO) on 28 December 2005.

BACKGROUND

On 19 June 2000, applicant filed international application PCT/EP00/05631, which designated the United States and claimed a priority date of 18 June 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 28 December 2000. The thirty-month period for paying the basic national fee in the United States expired at midnight on 18 December 2001.

On 17 December 2001, applicant filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date.

On 15 February 2002, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (FORM PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventor in compliance with 37 CFR 1.497(a)-(b) was required.

On 17 January 2003, the DO/EO/US mailed a NOTIFICATION OF ABANDONMENT (FORM PCT/DO/EO/909) indicating, *inter alia*, that the application was abandoned as to the

United States of America for failure to properly respond to the NOTIFICATION OF MISSING REQUIREMENTS mailed 15 February 2002.

On 09 June 2005, applicant filed a "PETITION UNDER 37 CFR 1.181 TO WITHDRAW A HOLDING OF ABANDONMENT AND, ALTERNATIVELY, PETITION UNDER 37 CFR 1.137(b) TO REVIVE ABANDONED APPLICATION".

On 19 July 2005, a decision was mailed dismissing applicants' petition under 37 CFR 1.181 and dismissing applicants' petition under 37 CFR 1.137(b).

On 23 December 2005, applicant filed the instant "REQUEST FOR RECONSIDERATION, RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS, AND AMENDED PETITION UNDER 37 CFR 1.137(b) TO REVIVE ABANDONED APPLICATION", which was accompanied by, *inter alia*, a petition/fee for a three month extension of time and a declaration of inventors.

DISCUSSION

Petition Under 37 CFR 1.181

The showing required to establish nonreceipt of an Office communication must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

Applicant has still not provided a copy of any docket records. Accordingly, at least item (2) has not been met.

Petition Under 37 CFR 1.137(b)

A petition to revive the present application under 37 CFR 1.137(b) must include:

- (1) The required reply;
- (2) The petition fee;
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

As to item (1), applicants submitted a declaration of inventors on 28 December 2005.

As to item (2), applicants submitted the petition fee on 09 June 2005.

As to item (3), the requisite statement has been provided. It is not clear from the record exactly when petitioner became aware that the application was abandoned. The above-identified application became abandoned at midnight on 16 September 2002 (15 September 2002 being a

Sunday). The first petition was filed almost three years after this date and over two years from the date of mailing of the NOTIFICATION OF ABANDONMENT. The USPTO is relying on petitioner's duty of candor and good faith and accepting the statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

Declaration of Inventors

The declaration of inventors filed 09 June 2005 is in compliance with 37 CFR 1.497(a)-(b).

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

For the reasons set forth above, the petition under 37 CFR 1.137(b) is **GRANTED**.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision.


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